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7 IN THE UNITED STATES DISTRICT COURT

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9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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11 KINFONG SIT and MEE WAI CHIU,

12 Plaintiffs,

13 v.

14 GENENTECH, INC. TAX REDUCTION  
15 INVESTMENT PLAN; AYUMI NAKAMOTO;  
and DOES 1 to 20,

16 Defendants. /

17 No. C 12-04864 SI;  
Related Case: No. C 12-05077 SI

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28 **ORDER RE: FURTHER BRIEFING ON  
MOTION TO REMAND**

Now before the Court is plaintiffs' motion to remand. Defendant Genentech, Inc. Tax Reduction Plan has filed an opposition and plaintiffs have filed a reply. Plaintiffs' motion raises three distinct grounds for remand: (1) remand the entire action to San Mateo County Superior Court because of procedural flaws in defendant's removal; (2) remand only the first cause of action for declaratory judgment as to abandonment to San Mateo County Superior Court and stay the remaining proceedings under the Court's discretionary power to sever the federal claims from the state law claims; or (3) stay all proceedings in this Court, pursuant to the *Colorado River* abstention doctrine, until the San Francisco County Superior Court rules on the issue of abandonment and/or separation in a separate action between the parties currently pending there. *See Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976).

1       Upon preliminary review of the parties' papers, the Court is inclined to agree with plaintiffs that  
2 a California court applying California law should decide the novel legal issue raised by plaintiffs'  
3 abandonment cause of action. In particular, the Court is inclined to agree that *Colorado River*  
4 abstention is appropriate here, where currently pending before the San Francisco County Superior Court  
5 is a case involving the same parties that will likely require that court to decide the same or similar  
6 abandonment issue. *See Nakamoto v. Sit, et al.*, No. CGC-12-520301, San Francisco County Superior  
7 Court. However, because plaintiffs raised the *Colorado River* abstention doctrine argument in reply,  
8 defendants have had no opportunity to brief its applicability here. Therefore, the Court hereby  
9 DIRECTS defendants to file a sur-reply, **no later than November 30, 2012**, addressing the abstention  
10 issues raised in plaintiffs' reply. The Court also CONTINUES the hearing currently set for November  
11 30, 2012, to **Wednesday, December 5, 2012, at 4:00pm**.

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13       **IT IS SO ORDERED.**

14 Dated: November 27, 2012  
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SUSAN ILLSTON  
United States District Judge